

REMARKS

Applicants have amended Claim 11 to specify the very narrowly defined alkanolethoxylates taught in their specification at page 3, line 23, through page 4, line 9. Applicants have added new Claims 21 and 22 to specify the even more narrowly defined alkanolethoxylates set forth at page 4, lines 3-5 and lines 6-8, respectively. Applicants have also added new Claims 23 and 24 to specify certain embodiments for dispersant component (c) as set forth in the specification at page 4, line 20, through page 5, line 12. (It may be noted that Claim 24 differs from Claim 23 in oxyethylene content of the tristyrylphenolethoxylate components.) All claims are thus fully supported in the specification.

In view of the restriction requirement discussed below, Applicants have canceled Claims 19 and 20.

If the claims are found allowable, Applicants suggest that they be printed in the following order: 11-17, 21, 22, 18, 23, and 24.

Information Disclosure Statement

Applicants note that a copy of the Form PTO 1449 they had submitted was attached to the Office Action and included the Examiner's name at the bottom but did not include the Examiner's initials for each identified document. Applicants respectfully request that an initialed copy of the form be sent to Applicants for their records.

Restriction Requirement

During a phone interview on December 3, 2007, the Examiner required election of one of the following groups:

Group I: Claims 11-18, drawn to suspension concentrate

Group II: Claim 19, drawn to process for preparing suspension concentrate

Group III: Claim 20, drawn to use of suspension concentrate

Applicants note that although the Office Action at several locations refers to Claim 10, Claim 10 was previously canceled and clearly should not be included among the elected claims.

Applicants acknowledge election of Group I of the Office Action but without traverse. Applicants have accordingly canceled Claims 19 and 20 but reserve the right to file one or more divisional applications directed to the non-elected subject matter.

Specification

The Office Action suggests that the form of certain trademarks should be corrected. Although the Office Action cites no authority for the requested changes, Applicants have amended the specification at pages 4 and 5 as kindly suggested to capitalize the names and to insert an appropriate generic name, as well as to correct the placement of the registration symbol and the source as needed. (Note that Lanxess is a successor of a part of the business of Bayer AG.) Applicants note also that they have also corrected other trademarks appearing on pages 5 and 6. Because the capitalization of the trademarks is not a substantive change and the addition of generic terminology is within the text, as well as being inherent in the respective trademark registrations, Applicants respectfully submit that they have not added new matter.

Rejection under 35 U.S.C. 102

Claims 11, 12, and 18 stand rejected under 35 U.S.C. 102(b) as being anticipated by United States Published Application 2002/0040044 ("Schlatter"). Applicants respectfully traverse.

Schlatter discloses pesticidal aqueous suspension concentrates containing **(A)** water-insoluble solid triazole fungicides and **(B)** surfactants that are combinations of (1) tristyrilphenol ethoxylates (or a sulfate or phosphate thereof) with (2) one or more polymers that can be (a) vinylpyrrolidone homopolymers or (b) vinylpyrrolidone/styrene block copolymers or (c) hydrophilic ethylene oxide-propylene oxide block copolymers. E.g., page, paragraphs [0001] through [0005]. Because this general description does not include certain elements of Applicants' claimed invention, the Office Action at page 5 relies upon the disclosure of the specific additional materials Atlox 4913 and Atlox 4894 in Example 2a of the reference at paragraph [0059]).

Applicants note by way of preliminary comment that the narrowly defined alkanolethoxylates that are a key feature of their invention are not among the surfactants described in component (B) of the reference. Alcohol ethoxylates are mentioned at page 3, paragraph [0045], but only in very general terms as one of many types of optional adjuvants. This teaching of Schlatter thus lacks the specificity to support a finding of anticipation. Applicants submit that disclosure of Atlox 4913 and Atlox 4894 is also not sufficient to support the anticipation rejection.

With respect to Atlox 4913, the Office Action at page 5 relies upon a teaching in Schlatter (see page 3, near top of right column) that Atlox 4913 is an acrylic graft copolymer of methyl 2-methyl-2-propenoate and α -(2-methyl-1-oxo-2-propenyl)- ω -methoxypoly(oxy-1,2-ethanediyl), which Applicants' specification at page 4, lines 17-22, teaches is one of the dispersants of their component (c). Thus, even if Example 2a of the reference can be viewed as teaching that Atlox 4913 can be used as a dispersant in addition to those identified in the general description of the reference (see above), the use of Atlox 4913 would at most suggest one of the compounds of Applicants' component (c) but could not be read to teach the use of the alkanolethoxylates of Applicants' component (b).

With respect to Atlox 4894, Schlatter at page 3, near top of right column, describes Atlox 4894 as a "Polyalkyleneglycol ether/alcohol EO" but gives no details about its formula sufficient to determine its relationship – if any – to the narrowly defined alkanolethoxylates of Applicants' component (b). As will be discussed below (with respect to the obviousness rejections), Applicants have provided biological data showing that Atlox 4894 is unlikely to be structurally or functionally related to alkanolethoxylates of their invention.

Moreover, even if one were to pick and choose from among the multitude of possible compounds disclosed in Schlatter to find compounds of the type specified by Applicants and even if the lack of detail about Atlox 4894 were to be ignored, one skilled in the art would not be led to Applicants' particular combination of azoles and strobilurins, narrowly defined alkanol ethoxylates, and specifically selected dispersants (especially as specified in Applicants' Claims 23 and 24). Applicants note also that the absence of at least some features of their claimed invention is effectively conceded in the Office Action in its discussion of the obviousness rejection in the middle of page 7. Applicants therefore respectfully submit that Schlatter lacks the specificity to anticipate their claimed invention, particularly since one of the essential components of their invention is mentioned in the reference as nothing more than an optional component.

Rejection under 35 U.S.C. 103

A. Schlatter

Claims 11, 13-15, and 17-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schlatter. Applicants respectfully traverse.

As discussed above, Schlatter discloses pesticidal combinations of triazole fungicides with certain polymeric surfactants. However, for essentially the same reasons presented above, Schlatter not only does not anticipate but also does not suggest their claimed invention. Furthermore, Schlatter does not suggest the particular characteristics of at least some of the individual components specified by Applicants, especially the alkanolethoxylates of formula (I). This is particularly evident for Applicants' Claims 21-24. As an additional example (beyond what was discussed above with respect to the anticipation rejection), Schlatter teaches that suitable tristyrylphenol ethoxylates have average ethoxylate contents of 8 to 40 mol, but with a distinct preference for 10 to 20 mol, most preferably 14 to 18 mol, whereas Applicants express a preference for 29 to 60 oxyethylene units (see Claim 23), more preferably 50 to 60 oxyethylene units (see Claim 24). For these reasons alone, Applicants submit that Schlatter would not render their claimed invention obvious.

Nevertheless, Applicants now present data in the form of a Declaration under 37 C.F.R. 1.132 of Dr. Peter Baur showing that compositions according to their invention containing the azole compound tebuconazole and Genapol C-100 (an alkanolethoxylate of Applicants' formula (I)) provide clearly superior penetration of leaf cuticles of apples by tebuconazole when compared not only to tebuconazole alone but also to comparative compositions containing both tebuconazole and Atlox 4894. Applicants submit that those skilled in the art having knowledge of Schlatter would not have been led to their claimed invention.

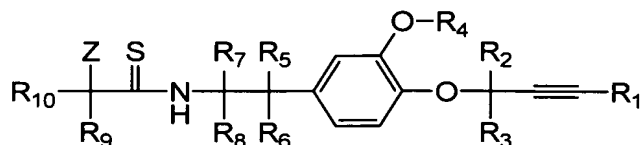
Applicants therefore respectfully submit that their claimed invention is not rendered obvious by Schlatter.

B. Schlatter in view of Kunz et al

Claims 11 and 16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schlatter in view of WO 02/081437 ("Kunz et al"). Applicants respectfully traverse.

As fully discussed above, Applicants submit that Schlatter alone does not teach or suggest their claimed invention. Applicants also submit that Kunz et al would not lead those skilled in the art from Schlatter to their claimed invention.

Kunz et al discloses microbicidal N-phenethyl thioacetic acid derivatives having the formula



in which R_1 is hydrogen, alkyl, cycloalkyl, or optionally substituted aryl; R_2 and R_3 are each hydrogen or alkyl; R_4 is alkyl, alkenyl, or alkynyl; R_5 , R_6 , R_7 , and R_8 are hydrogen or alkyl; R_9 is hydrogen, optionally substituted alkyl, optionally substituted alkenyl, or optionally substituted alkynyl; R_{10} is optionally substituted aryl or optionally substituted heteroaryl; and Z is hydroxyl, optionally substituted aryloxy, optionally substituted alkoxy, optionally substituted alkenyloxy, optionally substituted alkynyloxy, optionally substituted arylthio, optionally substituted alkylthio, optionally substituted alkenylthio, optionally substituted alkynylthio, optionally substituted alkylsulfinyl, optionally substituted alkenylsulfinyl, optionally substituted alkynylsulfinyl, optionally substituted alkylsulfonyl, optionally substituted alkenylsulfonyl, optionally substituted alkynylsulfonyl, or a group $-OCO-R_{11}$, $-OCO-OR_{11}$, or $-CO-CO-O-R_{11}$ in which R_{11} is hydrogen, optionally substituted alkyl, optionally substituted cycloalkyl, optionally substituted aryl, or optionally substituted heteroaryl. E.g., page 1. Such compounds are not among the types of active compounds specified by Applicants. While it is true that Kunz et al teaches that the N-phenethyl thioacetic acid derivatives it does disclose can be used in combination with a host of mixing partners, including other fungicides (see bottom of page 23 through top of page 25), nothing in the reference would lead those skilled in the art to select the particular components required by Applicants while ignoring the clear teaching of the reference that the disclosed fungicidal N-phenethyl thioacetic acid derivatives must be present as a necessary component. Applicants maintain that the teachings of Kunz et al are simply too diffuse to lead those skilled in the art from to their claimed invention.

Applicants therefore respectfully submit that their claimed invention is not rendered obvious by Schlatter in view of Kunz et al.

In view of the preceding amendments and remarks, allowance of the claims is respectfully requested.

Respectfully submitted,

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